

**Congress of the United States**  
Washington, DC 20515

March 23, 2021

President Joe Biden  
The White House  
1600 Pennsylvania Ave  
Washington, D.C. 20500

Dear President Biden:

We write in support of the Department of the Interior's (DOI) February 4, 2021 announcement that they would delay and reevaluate the Trump era Migratory Bird Treaty Act (MBTA) rule as well as the March 8, 2021 announcement that they would rescind the unlawful M-Opinion. This rule sought to rollback federal oversight and remove prohibitions related to the incidental killing of migratory birds. We urge Interior to reverse this shortsighted and unlawful rule. We are also writing to share guidance and recommendations for federal rulemaking related to the MBTA that would continue to provide important protections for migratory bird species while simultaneously allowing for greater certainty for industry and other stakeholders potentially impacted by federal MBTA regulations.

The United States signed migratory bird treaties and passed the MBTA more than a century ago. This foundational environmental law provides statutory protections for more than 1,000 species of native birds and rescued many from the brink of extinction. It is due to the MBTA that the U.S. Fish and Wildlife Service (FWS) has been able to assist states, conservation groups, and industries in developing best practices for reducing incidental take and improving the conservation of migratory birds. Through the MBTA, Congress determined that protected birds shall not be killed "by any means or in any manner" without a permit. It has been held for decades, by both Republican and Democratic administrations, that the MBTA applies to hunting as well as to commercial and industrial hazards. Therefore, when negligent harm occurred, as in the cases of the Exxon Valdez and BP Deepwater Horizon oil spills, Exxon and BP were fined, and important habitat restoration funds were invested into the North American Wetlands Conservation Fund to benefit migratory birds.

The Trump Administration's efforts to eliminate these important protections within the MBTA initially occurred on December 22, 2017, when the DOI's Solicitor's office published its legal opinion claiming that the MBTA does not cover incidental take. Shortly after this opinion was released, seventeen former high-ranking DOI officials, under every Republican and Democratic administration from President Nixon to President Obama, asked the Trump Administration to suspend its reinterpretation of the law. Further, the legal opinion was later ruled unlawful by the U.S. District Court for the Southern District of New York, which found that the reinterpretation "runs counter to the purpose of the MBTA". The decision unambiguously found that the M-Opinion does not align with the intent and the letter of the law passed by Congress.

Despite the objections from former Interior officials and the U.S. District Court ruling the previous Administration continued the rulemaking process guided by DOI's unlawful M-Opinion. Further, 25 state governments, numerous Tribal governments, and three flyway councils objected to the proposed rule and raised concerns about lack of Tribal consultation. The Canadian government wrote of concerns about how the rule would impact the United States-Canada bilateral treaty and shared migratory birds.

Hundreds of organizations and hundreds of thousands of individuals also submitted comments against the rule.

We were glad to see the Biden Administration put a pause on the January 7, 2021 rule because the unlawful M-Opinion rule should be abandoned with a return to the longstanding bipartisan interpretation that incidental take is prohibited by the MBTA. Doing so allows FWS to continue its important work in partnership with States and Tribes to recover and maintain bird populations and carry out our international treaty obligations.

We also believe that the Department of Interior can simultaneously protect migratory birds while offering stakeholders regulatory certainty. The Department of Interior and the Fish and Wildlife Service should do this by establishing a regulatory general-permit framework based on best management practices that provide legal coverage for a variety of activities that commonly take migratory birds incidentally. This framework was listed by the FWS draft EIS, under its “Alternatives Considered but Not Carried Forward for Further Review” as well as set out in the bipartisan Migratory Bird Protection Act (H.R. 5552 in the 116th Congress) in the House of Representatives.

We applaud your Administration’s efforts to overturn this rulemaking and instead focus on efforts that protect and sustain migratory bird population and uphold our international treaty obligations. Thank you again for your leadership and action to protect migratory birds, and for your consideration of our recommendations moving forward.

Sincerely,



Alan Lowenthal  
Member of Congress

/s/  
Raúl Grijalva  
Member of Congress

/s/  
Donald S. Beyer Jr.  
Member of Congress

/s/  
Julia Brownley  
Member of Congress

/s/  
Kathy Castor  
Member of Congress



Brian Fitzpatrick  
Member of Congress

/s/  
Steve Stivers  
Member of Congress

/s/  
Earl Blumenauer  
Member of Congress

/s/  
Tony Cárdenas  
Member of Congress

/s/  
Emanuel Cleaver, II  
Member of Congress



Mike Thompson  
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/s/  
Nanette Diaz Barragán  
Member of Congress

/s/  
Suzanne Bonamici  
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Ed Case  
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Steve Cohen  
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Gerald E. Connolly  
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Jesús G. “Chuy” García  
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Josh Gottheimer  
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Eleanor Holmes Norton  
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Jared Huffman  
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Sara Jacobs  
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Henry C. "Hank" Johnson  
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Peter Welch  
Member of Congress

cc: Secretary of Interior, Deb Haaland